



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order to cancel a two month Notice to End Tenancy for the Landlord's use of the rental unit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Issues(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

This tenancy began June 1, 2011, with a written tenancy agreement requiring \$650.00 a month in rent, payable on the first day of the month. The Tenants entered the tenancy agreement with the previous property owner, the former landlord. The rental unit property was sold to the current Landlords sometime after this tenancy agreement was entered into.

On July 30, 2012, the Tenants received a 2 Month Notice to End Tenancy for the Landlords' use of the property, indicating that the Landlords have all necessary permits and approvals required by law to demolish or repair the rental unit in a manner that requires the rental unit to be vacant (the "Notice"). In the details of their Application the Tenants bring into question the good faith intentions of the Landlords in issuing the Notice, as they refused to sign a new tenancy agreement with a higher rate of rent.

Pursuant to section 11.1 of the rules of procedure, the Landlords provided their evidence first regarding the Notice.

The appearing Landlord testified that prior to purchasing the subject property the two Landlords discussed how the property might be brought into good rental condition. The Landlord testified that they purchased a number of properties and have ongoing renovations in these rental units.

According to the Landlord's testimony, they had a local property manager assess the rental unit property and this person recommended substantial upgrades. The person or the Landlords also felt that the rate of rent for the unit was below the market rate, which they allege should be \$800.00 to \$900.00 per month. The Landlords also felt the Tenants may not have the best facilities in the rental unit. The Landlord testified that a three bedroom unit, such as the subject rental unit, should attract market rent of approximately \$1,200.00 per month.

According to the testimony, the local manager approached the Tenants and offered to let them stay in the rental unit if the rent increased to \$900.00 per month and they entered in a one year lease. According to the testimony of the Landlord, at the end of the year the Tenants would move out and the Landlords would perform the renovations.

The Tenants wrote the Landlords on July 20, 2012, and informed them they would not enter into a new tenancy agreement for a higher rate of rent and for a one year term. The Tenants informed the Landlords that the proposed rent increase was beyond the statutory limit of 4.3% for 2012, and that they had made themselves aware of their rights under the Act.

The local manager made another offer to the Tenants; that if they signed the one year lease the Landlord would credit them back \$100.00 per month and this would take the form of an addendum to the one year lease. This would mean a monthly rent of \$800.00 per month, rising from the current \$650.00 rate.

On July 28, 2012, the Tenants wrote to the Landlords and informed them they would not agree to sign the new lease or addendum at \$800.00 per month. The Tenants include the following statement in their letter:

"We believe that the pressure you've put upon us to sign the new agreement is unfair and we don't appreciate the verbal threat of eviction if we do not sign the agreement with your terms."

On July 30, 2012, the Tenants received the Notice.

The testimony of the Landlord was that they were doing a complete renovation or “tear out” at the rental unit. They plan on removing and replacing the kitchen cabinets and renovating the bathrooms. They plan on installing completely new electrical fixtures and replacing plumbing.

The Landlords did not supply any documentary evidence in support of their Notice. The Landlord testified that no permits or approvals are required.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I **find the Notice should be cancelled** for the following reasons.

Section 49(6) of the Act requires that the Landlord must act in good faith in ending the tenancy, when issuing this type of Notice.

Residential Tenancy Policy Guideline #2 includes the following explanation of the good faith requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the

landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, I find the Landlords had insufficient evidence to prove their good faith intentions of doing renovations in the unit. For example, they had no plans, material lists, or evidence of a contract with a company or worker doing the alleged renovations.

While the appearing Landlord testified that no permits or approvals were required for this work, the Landlords provided insufficient evidence of this, such as a letter from the local municipal authority or other evidence indicating the municipality reviewed their proposed plan and no permits or approvals are required for the proposed work.

Given the circumstances here, in particular the short time between the Tenants refusing to pay the large rent increase proposed and the issuance of the Notice, I find the Landlords had other purposes or ulterior motives in issuing the Notice. These were to retaliate against the Tenants for refusing to agree to the significant rent increase proposed, or, to evict the Tenants in order to raise the rent to a level unattainable under the rent control provisions of the legislation. Regardless, the Landlords have failed to provide sufficient evidence they truly intend on doing what they what they said they would do in the Notice.

Therefore, I allow the Application of the Tenants and order that the Notice is cancelled and it is of no force or effect.

This tenancy shall continue until ended in accordance with the Act. The tenancy agreement from June 1, 2011, continues to be the tenancy agreement between the parties, and the rent remains unchanged. The Landlords accepted this agreement under the law when they took over ownership of the property. Neither party can change the terms of the tenancy agreement without the written agreement of the other party.

I caution the Landlords that any further attempts to end the tenancy must be done in good faith and in accordance with the Act, otherwise this may give rise to the Tenants making a claim for monetary relief against the Landlords, or the Landlords might face administrative penalties.

I also note there are provisions in the Act which would allow the Landlords to make an Application for an additional rent increase beyond the statutory limits in the Act, if they

so choose.

Conclusion

The Notice to End tenancy is cancelled and is of no force or effect. The Landlords have failed to provide sufficient evidence to prove they truly intend on doing what they what they said they would do in the Notice and that they had no ulterior motives or purposes.

The tenancy agreement of June 1, 2011, still applies to this tenancy.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 28, 2012.

Residential Tenancy Branch